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CURRENT TOPICS

The Law Society's Annual Report

THE report for 1953–54 of the Council of The Law Society contains, as always, a mass of interesting and valuable information. It covers on this occasion a period of only eleven months, from 1st June, 1953, to 30th April, 1954, and future reports will be carried to 30th April in each year. Once again a record membership figure has been reached, the total at the end of the period covered being 16,389 members, of whom a little over one-third practise in London. Hard on the heels of the Council's report to the Lord Chancellor on legal aid in 1952–53 come further figures dealing with the subsequent year to 31st March, 1954 : some of these are noted in another paragraph below. The grant by Her Majesty the Queen of the Society's Supplemental Charter on 10th March, 1954, and the passing of new byelaws at a special general meeting on 8th April, 1954, have together given effect to the recommendations of the Constitution Committee set up in 1947, and to accommodate the increased membership of the Council a new council room has been completed. The various committees of the Council continue to get through a vast volume of business, and from their reports we note *inter alia* that the desirability of appointing a public relations officer for the Society is being actively considered, that much thought has been given to the question of a scale of charges for winding up estates, and that progress has been made in suggested redrafts of Appendix N and the corresponding county court scales of costs in contentious matters. Of particular interest is the news that, following the report of the Millard Tucker Committee on taxation of retirement benefits, the Society has begun work on preparing a scheme of retirement benefits for the solicitors' branch of the profession with a view to its submission to the Government.

Legal Aid Figures : A Downward Trend

THE success of the legal aid scheme is re-emphasised in the statistical analysis of the third full year's working of the scheme contained in the report. It is shown not merely by the number of applications for legal aid which were accepted between 1st April, 1953, and 31st March, 1954, 49,239, but also by the fact that legally aided persons continued to be successful in 90 per cent. of the cases which came before the courts. It must not be left out of the reckoning of achievement that settlements were reached out of court in 1,955 cases, a figure representing an increase over the 1,882 for the previous year and 1,013 for the year before that. It is in the light of these figures that criticisms of the certifying committees must be considered. With regard to the criticism that the committees distribute the new bounty overlavishly or without sufficient discrimination, it should be borne in mind that last year 25 per cent. of the number of applications considered were refused. A peculiar feature of the analysis is the downward trend in the number of Divorce Department cases, in which the contribution of the assisted person is less than £10. The monthly total has fallen to a figure of under 400, as against over 500 last year, and over

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700 the year before. Another downward trend is in the number of matrimonial causes in which legal aid was accepted, 21,550, as against 25,174 in the previous year, and 30,534 in the year before that. There has been a lessening in the volume of divorce work generally, but the possibility cannot be excluded that in many cases, and certainly in many undefended divorces, legal aid offers no advantages which cannot be obtained by instructing a solicitor without such assistance.

Conveyancing Work: A Solicitor's Prerogative?

A REPORT presented by the executive committee of the Society of Local Government Barristers to the recent annual general meeting of that society contains a spirited reply to the representations made by The Law Society to the General Council of the Bar on the subject of the transaction of practical conveyancing business (including sending requisitions, examining documents and attending completions) by barristers holding appointments under local authorities. We summarised The Law Society's contentions at p. 185, *ante*. The local government barristers dispute the statement that practical conveyancing " is and always has been " a solicitor's job, and have obviously performed some research into the historical origins of ss. 47 and 48 of the Solicitors Act, 1932. They read s. 48 as making it clear that a barrister is qualified not only to draw or prepare instruments of transfer or charge under the Land Registration Act, 1925, but also to make applications and lodge documents for registration at the registry. The committee refer besides to previous rulings of the Bar Council, some of them of long standing, and assert that the 1949 ruling to which objection has been taken by The Law Society neither introduced any new principle nor widened any existing one, so far as the ruling related to conveyancing. The meeting is reported to have taken strong exception to " what appeared to be an attempt by The Law Society to secure a 'closed shop' in favour of solicitors in local government where none has ever existed before." At this stage, both sides having made known their views, comment may well be reserved, since, as our readers will remember, the matter has been referred by the Bar Council to the Benchers of the four Inns of Court.

Non-Contentious Probate Rules Modernised

THERE can be few branches of the law in which procedure remains substantially as laid down in rules promulgated in 1862. Yet that is the year in which the Non-Contentious Probate Rules for the Principal Registry were made, and the parallel rules for district registries date from 1863. Amendments there have indeed been in plenty, and the practitioner of to-day is faced with a code of rules largely archaic in wording, in some particulars obsolete, and luxuriant with a formidable array of later additions and alterations. Moreover, the novice in these matters soon discovers that even so the rules are far from a comprehensive guide: much of the practice has become enshrined in practice notes and directions, many of them difficult or impossible to track down. And now a thorough spring-cleaning has taken place: from 1st October next the old rules and many of the practice notes and directions are replaced by an entirely redrafted and streamlined set of rules, sixty-eight in number, supplemented by seven forms, and applicable to the Principal Registry and the district registries alike (Non-Contentious Probate Rules, 1954: S.I. 1954 No. 796 (L.6)). The new rules will apply to proceedings pending on 1st October, 1954, as well as to proceedings commenced on or after that date, but where the deceased died before 1st January, 1926, the right to a grant will still be determined in accordance with the principles and rules prevailing at the date of death. A certain number of changes in existing practice are embodied in the new code, and these we hope to deal with in a later issue, confining ourselves for the present to expressing a warm welcome to this notable simplification and a strong plea for the issue in accessible consolidated form of such practice notes and directions as continue to be necessary to supplement the rules.

Is Endorsement Necessary?

THE custom of merchants with regard to the endorsement of negotiable instruments sanctioned by the common law and later by the Bills of Exchange Act, 1882, is often regarded as an essential safeguard, for the possibility of personal resort to the endorser strengthens the confidence felt in the bill or note endorsed. The general manager of the Clydesdale and Northern Bank, in his presidential address on 14th June, 1954, at the annual meeting of the Institute of Bankers in Scotland, asked whether " the time-consuming process of endorsement of cheques " was necessary now that most cheques were paid into accounts. Partly answering his own question, he said that there were complex legal enactments and decisions underlying their everyday usage. He denied that only " hide-bound prejudice " stood in the way of reform, and said with regard to the fact that a member of Parliament had expressed his intention to introduce a Private Members' Bill, that if a well-devised measure could be produced, the banks could be expected to give it every support. Possibly the reasons for the necessity of endorsements do not apply to cheques which are paid directly into the payee's account at the bank. If the expenditure of time on such endorsements is substantial, it is a matter for reform, if Parliament can spare the time.

Comparative Law without Tears

THE busiest of solicitors, glancing at *The Times* of 19th June, would have found his attention arrested by two examples of the working of foreign systems of law either of which would, he might have thought, if something like it were to become a practical possibility under English law, tend to make him a busier solicitor still. First there was the French myxomatosis case,' in which two rabbit breeders are suing a professor for damages, alleging that he unwittingly caused last year's epidemic of the disease by inoculating wild rabbits with it in 1952. It is not yet clear whether the defendant is implicated as scientist or as land owner, but it is forecast by the correspondent of *The Times* that, should success attend the plaintiffs' efforts, similar actions may be brought by sporting clubs, gunsmiths, cartridge makers and dealers, hotel and restaurant proprietors, gamekeepers and trappers, fur dealers, felt manufacturers and glove and hat makers, as well as by other rabbit breeders. There seems material here for a whole library of authority on remoteness. The second instance of the way other lawyers do things concerned a trial in this country by a United States court martial, in which the prosecutor is reported as saying that it was irrelevant and immaterial that the offences charged were not offences in English law. The charges alleged wrongful sexual intercourse by the accused, a married man, with a woman not his wife; and that the accused contributed to the delinquency of a woman by entertaining her without proper escort in his bachelor residence and by furnishing her with alcoholic beverages. If this sounds to some of our readers a novel charge sheet, the explanation is possibly that the description given consists only of the *particulars* of the offences. The

substantive charges were laid as violations of Article 134 of the Uniform Code of Military Justice. Those who have been concerned with English courts martial will recall that under s. 40 of our own Army and Air Force Acts it is open to the prosecution to attack many kinds of undesirable behaviour as "conduct to the prejudice of good order and discipline."

Accountants and Solicitors

IN the course of a paper on the History of the Accountancy Profession in Scotland, read by Professor ROBERT BROWNING, of the University of Glasgow, on 18th June, 1954, at the centenary celebrations of the Institute of Chartered Accountants of Scotland, it was stated that in the 1920's and early 1930's "the professional accountant came gradually to take the place of the solicitor as the business man's adviser. The practising accountant, preparing annual accounts and settling taxation liabilities, came to know and understand his client and his affairs much more intimately than a solicitor, and when someone independent required to be consulted the business man found it easy and satisfactory to go to his accountant. From this work the practising accountant derived both pleasure and satisfaction. In it the ideal of service, which must have an honoured place in the aims of all professions, finds practical expression. If he is to continue to maintain this position the practising accountant must avoid narrow specialisation and combine technical skill and knowledge of the work of his profession with the sound judgment which only comes from a good experience." We quote this effusion in full, not because it contains any news of a sad demise of the legal profession in Scotland, but because it is the clearest possible evidence of the style of thinking to which those people are accustomed who seek to annex to their professions functions which do not strictly belong to them. If Professor Browning warns his listeners against narrow specialisation, we respectfully warn the Professor against the dangers of wide generalisation.

The Functions of Accountants

WITH everything that has been recently said and done to raise the status of the accountancy profession, from the centenary celebrations in Edinburgh to the announcement of the founding of a chair of Finance and Accountancy in the University of Cambridge next October, we are in complete and enthusiastic accord. One example is the recent legacy by the late Mr. P. D. Leake of £86,000 to the Institute of Chartered Accountants in England and Wales, out of which the first chair at either Oxford or Cambridge in this subject is to be founded, although there are some eight professors and lecturers in accountancy at the twenty degree-granting universities in Great Britain and Northern Ireland. The growth of mechanical accounting has relieved the accountant and auditor of much drudgery, and the demand of the big industrial and distributing organisations, as well as of State-run and other public concerns, is for organisers and advisers in the accountancy field. Even in the smaller type of business the accountant's role is often more than that of a mere auditor for income tax purposes. This is indicated in a booklet, *Management Accounting—An Outline of its Nature and Purpose*, published by the Institute of Chartered Accountants in England and Wales. The small business man requires advice on planning, costing and budgeting, and the booklet, which is issued free by the Institute, shows how this guidance may be forthcoming. Why should not The Law Society take a leaf out of the Institute's book, as it were, and issue pamphlets to the public indicating how solicitors may save their clients from unnecessary expenditure?

Crichel Down

A KIND of storm has been caused by the MINISTER OF AGRICULTURE'S statement in the Commons on 15th June, 1954, with regard to the Report by Sir ANDREW CLARK, Q.C., on the Crichel Down Inquiry, published on the same day. His satisfaction that the inquiry had achieved its main purpose, to scotch completely rumours of dishonesty and corruption, was qualified by an admission that mistakes and errors of judgment had been made. He had, however, formed a "less unfavourable view of many of the actions taken" than appears in the Report, but he promised a statement on general policy relating to the disposal of land purchased compulsorily for public purposes, as soon as a debate could be arranged. Comments that a private citizen has had to expend money to make a Minister accept responsibility for his department, that Ministers should identify themselves more with the public than with the departments of which they are titular heads, and cease unduly to apologise for or defend those departments and that public departments have too much administrative discretion affecting the rights of private citizens and exercise it arbitrarily, are possibly true but not so helpful as the suggestion by Mr. LESLIE WAITE, in *The Times* of 19th June, that "when it is no longer required the land which has been requisitioned and bought (as distinct from that which has been only requisitioned and rented) should be publicly offered for sale by auction after proper advertisement in the national and local newspapers. The Crown Commissioners . . . and other similar bodies with money to invest could then bid as well as the previous owners if the latter were interested." This would have disposed of the main grievance, which in this case is that Lieut.-Com. MARTEN, having offered in June, 1952, to buy back 328 acres of land which before 1937 had been in his family, was told that a tenancy would be advertised for public tender, although in fact no public tender was intended. Instructions were in fact given that no approach for information was to be made to previous owners or anyone connected with the land. The Report is published as a White Paper (Cmd. 9176, price 1s. 3d.).

Status of the Private Investigator

THE Association of British Detectives held its first annual meeting early this month. Of its membership of 300, of whom 100 are abroad, at least half have served in the police force in ranks from deputy chief-constable downwards. Half of their activities are concerned with divorce, and accidents in factories and on the roads form a large proportion of the remainder. Sometimes private investigators, as they prefer to be called, are commissioned by the defence in criminal proceedings to search for evidence to balance that provided by the prosecution and it is only in that less common class of work that the investigator's task is similar to that of the detective of fiction. The detective's life, as solicitors well know from experience of divorce cases, is not humdrum, and offers variety and interest, as well as open air activity, to those adventurous persons who either seek congenial employment in their retirement from the police force, or otherwise are suited temperamentally to the work. The Association has the praiseworthy object of establishing a high standing for their profession. Decisions have been taken which will make strict qualifications a condition of membership; not only personal testimonials will be required, but also it will be necessary to show the quality of the work which they have done during two years' full time employment as private investigators. We respectfully offer best wishes for the foundation of an Association which promises so well for the future.

THE RIGHT TO ASSISTED APPEAL

By A MEMBER OF AN AREA COMMITTEE

AN ordinary certifying committee can no longer authorise the fighting of an appeal at the expense of the Legal Aid Fund. As a result of the Legal Aid (General) (Amendment No. 1) Regulations, 1954, from 27th April this power is now reserved to area committees. The Legal Aid Scheme has thus undergone its first major reform. There have been numerous amendments before, but never a change so important as this.

The Legal Aid Scheme is managed jointly by solicitors and the Bar, but in many ways it is far more a child of the first than the second. It was conceived by The Law Society and by sheer numbers solicitors outweigh barristers on all the committees that administer it. It may also be fair to our profession to say that by habit we are more used to business and administration than barristers and so we show more interest in the purely administrative side than the Bar. The scheme undoubtedly benefits the Bar as well as solicitors, but nevertheless it is a fair guess that in the minds of the Bar and the Bench the scheme is a solicitors' scheme on which they are prepared to turn a benevolent eye.

Prepared—but not always willing. One of the disturbing features of the scheme during its nearly three years of life has been the recurrence of criticisms from the Bench concerning the propriety of certificates having been granted in certain cases, and most particularly the grant of certificates authorising appeals. Obviously some applicants have received certificates unjustifiably—unjustifiably, that is, in the light of the full facts when given by both sides on oath and under cross-examination, a very different matter from the written *ex parte* statements seen by the certifying committee.

Criticism has, however, centred round assisted appeals and this is a matter on which judicial comment has been particularly severe. The Law Society have sought to argue back with statistics, but it is evident now that the judges have at least partially made their point. The change of power from certifying committees to area committees, that is, from a local to a regional body, is a tacit admission that things needed to be tightened up.

So area committees are approaching a new task in the knowledge that all has not been well before and that they must do better. Their problem is to know what methods to use and what standards to apply to obtain better results.

In granting a certificate for the assistance of the first trial of any matter certifying committees have faced, and still can face, a fairly straightforward problem. Admitted that they hear only one side of the story, it is not too difficult for them to decide that the statements ring reasonably true and that, on the facts stated, there is a good *prima facie* case for trial. The applicant's case may prove to be bad in court, but a proportion of bad cases is an acceptable feature of the scheme.

The considerations to be applied when considering an application for assistance on appeal are entirely different. The case has been heard once already, perhaps before the magistrates or a county court judge or before a judge of the High Court. Sworn evidence has been given, there has been opportunity for cross-examination and the wisdom of one properly constituted legal tribunal has been applied to the matter on the basis of the evidence provided. The tribunal has given its decision and the applicant now wants the State to help him to prove that that tribunal was wrong.

Members of certifying committees frequently ask themselves: "What advice would I give to an ordinary client on these facts?" but in deciding whether the State should help to re-try one of its own decisions, this question does not help. When an ordinary client decides whether or not to appeal, the length of his purse is of overwhelming importance. So is the possibility of his being involved again in a similar claim. Questions of personal repute, of health, and of responsibility to other persons, all play their part. On the purely legal side a solicitor is very rarely in the position of being able to say to his client: "I feel quite sure the judge was wrong in law." Nearly always we have to make a very cautious estimate of probabilities. In the long run it is the client, not the solicitor, who decides.

In legal aid the situation is quite different and here we must face up to a social rather than a legal issue. Legal aid is subsidised, sometimes 100 per cent., out of the public purse. The grant of a certificate means that we are compelling Tom and Dick to help Harry with his legal costs. This is an odd conception, still resented by many people, and only justifiable on the ground that the State should not allow any subject to suffer an injustice without redress through poverty. Most lawyers are convinced, as a matter of social philosophy, that poor people should be financially helped to obtain the assistance of the court if they have, *prima facie*, a case that ought to go to court.

But that is a very different matter from saying that the poor man ought to be allowed two shots. If he has had his hearing, before magistrate, county court judge or High Court judge, he has had a fair chance. The benefits of a very fine system, albeit imperfect as all human systems are, has been extended to him. He can no longer complain: "I have been denied a hearing." Harry has had his chance and, having been told he is wrong, he wants Tom and Dick to pay for a second hearing. It falls accordingly upon an area committee, composed of perhaps a dozen solicitors and two or three barristers, to decide whether this ought to be done.

They may be able to read all the evidence, but they will not get the full impression of credibility or otherwise enjoyed by the court that heard it. They may have counsel's arguments before them and a full transcript of the judgment, but this only means they are entering into competition with the court as interpreters of the law. Are the members of a committee to re-try the case and audit the work of a court which has had the advantage of more time, first-hand impressions and probably greater experience and knowledge of the law than any member of the committee?

It is small wonder that judges have from time to time been incensed to find the State paying the costs of an expensive and unsuccessful appeal from the findings of a competent court after a full trial. Indeed it is not to be wondered at that certifying committees have made mistakes in tackling such an exceedingly thorny question.

When soberly considered the whole conception is extremely odd. Any court, but in particular the High Court, is an embodiment of the State and represents the State performing one of its highest functions. An area committee is another embodiment of the State, but on a considerably more humble plane. It is one thing to have a private individual demanding a retrial of his issue because he is not satisfied. It is quite another thing to have a minor department of the State reviewing the findings of a major department of the State and saying that on grounds of justice there ought to be a fresh trial. The picture of the younger brother reviewing the elder brother's work becomes even stranger when it is

appreciated that he has to do it without the benefit of personal observation of the parties or the opportunity of asking questions. The advantages of a judge in court actually hearing a case are so important compared with the disadvantages of a committee of solicitors (perhaps assisted by one or two junior counsel) sitting round a table discussing a written (and probably abbreviated) version of what was said that the impudence of the whole proceeding becomes even more apparent.

And yet it is argued that the assisted litigant should enjoy the same right of appeal as any other litigant. Perhaps he should in theory, but how can he in practice? The right of the ordinary litigant is to decide that he *wants* an appeal. The job of an area committee is to decide that there *ought to be* an appeal. They have to make an official pronouncement that there is such a degree of doubt about the soundness of the first hearing that the matter ought to be appealed at the public expense. The difference between the private decision on the one hand and the public and official decision on the other hand is no mere difference of shade, but a vast difference in substance, amounting to a totally different thing.

We must not be misled by our natural respect for our own profession and a tendency to be critical of judges. Very often a committee of solicitors may prove better judges of law than the most eminent judge, but we must not decide on the strength of exceptions. Assuming that our legal system works as it should do, the judge should normally know better than a committee of solicitors (even when aided by junior counsel) and certainly enjoys a superior opportunity.

It is natural, therefore, that the judges as a body are likely to be offended frequently by the selection of certain of their own decisions for retrial. There will always be some cases in which a manifest miscarriage of justice has occurred and the selection of these will not present any difficulties to area committees, nor is their retrial likely to cause offence among the judges. But how are we to pick those cases which should be retried simply because the judge misjudged the evidence or misapplied the law? Is not the answer that this is a function which only a committee of standing equal to or higher than the judge himself can perform? It is certainly not unfair to suggest that High Court judges can as well afford to sit on committees as hard-pressed solicitors.

SUSPECTED PERSONS

SECTION 4 of the Vagrancy Act, 1824, as amended, reads: "Every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue thereto, or any street, or any highway or any place adjacent to a street or highway, with intent to commit a felony [shall be guilty of an offence]."

The Prevention of Crimes Act, 1871, s. 15, provides that in proving such intent it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if, from the circumstances of the case and from his known character as proved, it appears that his intent was to commit a felony. By the Penal Servitude Act, 1891, s. 7, s. 4 is to apply also to every suspected person and reputed thief loitering about or in any of the said places and with the said intent. The Prevention of Crimes Act, 1871, s. 15, amended s. 4 also by providing that the street frequented by the accused need not lead to a river, etc., and this amendment is incorporated in the text of the section set out above.

The intent must be to commit a felony; this is usually stealing, and it will not suffice to show that the defendant intended only to commit an assault or an indecent assault or wilful damage (unless the damage is one of the few forms made a felony by statute). A defendant convicted under s. 4 is liable to a fine of £25 or three months' imprisonment and becomes a "rogue and vagabond." On a second conviction under s. 4, whether as a suspected person or under any other limb of that section, e.g., for indecent exposure or being found in a house for an unlawful purpose, he may, after conviction by the magistrates and on proof of the previous conviction, be committed to quarter sessions (and not assizes) for sentence. Quarter sessions may sentence him to one year's imprisonment. A conviction under any other statute or any other section of the Vagrancy Act does not suffice. Save as aforesaid, there is no power to commit persons convicted as suspected persons to quarter sessions for sentence, however shocking their records, under the Magistrates' Courts Act, 1952, s. 29. If the offender, however, has attained the age of sixteen but is under twenty-one at the date of conviction, he may be committed to quarter sessions with a view to Borstal training under s. 28 of the 1952 Act, whether or not his previous convictions are under the Vagrancy Act. Despite this liability to be committed to sessions, the defendant has no right to elect to be tried by a jury (*R.* v. *Evans* (1914), 110 L.T. 780). By the Firearms Act, 1937, s. 23 (2), if, when committing this offence, he is in possession of a firearm or imitation firearm, he should be committed for trial under the 1937 Act, when he becomes liable to seven years' imprisonment unless he shows that he had it in his possession for a lawful object.

The intent to commit a felony must, of course, be proved to the court by clear evidence; the evidence frequently consists of the accused's actions in trying door handles, etc., and his own admissions. As stated above, it must be shown that his intention was to commit a felony and not any lesser crime.

It must also be shown that the defendant is a suspected person or a reputed thief. To become a suspected person he must have become the object of suspicion prior to the act which caused his arrest. In *Pyburn* v. *Hudson* [1950] 1 All E.R. 1006 the defendant had been looking at a building in a manner which aroused a policeman's suspicions. He then started to climb on some scaffolding by the building with the obvious intention of breaking into it. He was arrested but the magistrates held that his action in merely looking at the building was not sufficient to constitute him a suspected person prior to the act of climbing on the scaffolding, which action caused his arrest. The High Court held that the magistrates were entitled so to find, but Lord Goddard, C.J., added that in his opinion they could quite properly have found that looking at the building with a view to seeing where it could be entered could constitute a suspicious act. In *Hartley* v. *Ellnor* (1917), 81 J.P. 201, the accused had been under observation for forty minutes and had been seen to tap the pockets of people in a busy street. In *Cohen* v. *Black* [1942] 2 All E.R. 299 it was said *obiter* that the evidence of several policemen who had seen the accused commit a number of suspicious acts in a few minutes, e.g., going round the house trying doors and windows, could be pooled to make him a suspected person. The High Court has not laid down what period of time will render a person a suspected person apart

from the *obiter dictum* just quoted, nor has it laid down whether the defendant might cease to be a suspected person as a result of a very long lapse of time. The question is sometimes raised whether an act a month or two months before the act occasioning the arrest can be given in evidence to bring a person within the section. One opinion is that such evidence is admissible, and it is a matter for the magistrates what weight they will attach to it. Another opinion bases itself on *Harris* v. *Director of Public Prosecutions* [1952] A.C. 694, where the House of Lords laid down this proposition: "The prosecution may adduce all proper evidence tending to prove the charge against the accused, including evidence tending to show that he has been guilty of criminal acts other than those covered by the indictment without waiting for him to set up a specific defence calling for rebuttal and evidence of similar acts, e.g., to show intention or to rebut a possible defence of accident may properly be admitted but, *though such evidence is strictly admissible, the judge has a discretion to exclude it if it merely tends to deepen suspicion against the accused and its prejudicial effect is out of proportion to its probative value.*"

This case was not on the Vagrancy Act and, of course, it can be argued that it does not apply anyhow in the special circumstances where the prosecution must prove a previous suspicious act; on the other hand, it may be that it does apply and the court has the discretion to refuse to listen to any evidence of acts committed so long ago as to be prejudicial and out of all proportion to their probative value.

One act is insufficient to justify an arrest, even though it may have lasted some time (*Ledwith* v. *Roberts* [1937] 1 K.B. 232, a decision of the Court of Appeal in a false imprisonment case; in that case the accused had stood by a telephone box for twenty-five minutes, and the police suspected that he intended to rifle the coin box). The judgments in *Ledwith's* case rather limit the application of s. 4, but the Divisional Court has in turn rather limited their effect, in *Rawlings* v. *Smith* [1938] 1 K.B. 675 and *Cohen* v. *Black*, *supra*. Magistrates will generally follow a decision of the Divisional Court.

It is not necessary for the prosecution to prove a previous conviction in addition to a previous suspicious act. They may, however, prove a previous conviction or convictions, if they wish, in lieu of proving such previous suspicious act; in other words, the previous conviction has in itself brought the defendant within the category of a suspected person (*R.* v. *Clarke* [1950] 1 K.B. 523, where it was held that the watching police officer need not even know of the previous convictions). Alternatively, the prosecution may prove that the defendant is a reputed thief, i.e., one who already has the reputation of a thief (*Ledwith* v. *Roberts*, *supra*). No doubt the magistrates would insist on strict proof of a conviction as a thief or house-breaker if the charge were that the defendant was a reputed thief. It is doubtful whether a conviction for false pretences or receiving would render a man a "reputed thief." For a strong criticism by a metropolitan magistrate of "bolstering-up" evidence of suspicious acts by proving a previous conviction, see (1953), Jo. Crim. L. 107.

"Frequenting" means being in a place long enough to effect the felonious purpose (*Clarke* v. *Taylor* (1948), 112 J.P. 439; in that case the defendant had pushed his way several times through a group of people round a bookmaker's pitch on a racecourse). In *Clark* v. *R.* (1884), 14 Q.B.D. 92, however, it was held that it was not "frequenting" where the accused had been met by a policeman in the street and immediately arrested, and there was no evidence that he had previously been seen in that street or in any adjacent street. The term "loitering" was considered in *Ledwith* v. *Roberts*, *supra*, and Greer, L.J., said that it meant loitering in such a way as to show that the defendant was idling in the street for some unlawful purpose and, as stated, standing by a phone box for twenty-five minutes was insufficient. In *Bridge* v. *Campbell* (1947), 177 L.T. 444, it was held that a person could loiter in a vehicle (in this case, a motor van) as well as on foot. It was said in *R.* v. *Goodwin* [1944] K.B. 518, a case under the Prevention of Crimes Act where previous convictions have to be proved, that, if a man can be equally charged with two offences one of which involves proof that he is a man of bad character and the other of which requires no such proof, it is always desirable that the latter charge should be chosen in view of the prejudice which his record would cause against him. It is submitted that this principle applies equally to cases under s. 4 of the Vagrancy Act when it is proposed to allege a previous conviction, and the section should not be used where a charge under, say, the Larceny Act could equally well be preferred. Should a charge under s. 4 have been brought involving proof of previous convictions and it transpires that some other charge, e.g., attempted shop-breaking, could equally well be brought, it is submitted that the magistrates should adjourn the case and request the prosecution to bring the charge of attempted shop-breaking before another Bench so that there would be no prejudice against the accused by reason of his record. The Press will generally co-operate in making no mention of his record if they are so requested.

The term "place of public resort" is quite a wide one and has been held to include a railway platform (*Ex parte Davis* (1857), 21 J.P. 280), a private house and garden where a public auction was being held (*Sewell* v. *Taylor* (1859), 23 J.P. 792), and Tattersall's Ring at a racecourse (*Glynn* v. *Simmonds* [1952] 2 All E.R. 47). It was held to be immaterial that to enter the ring one had to pay 30s., and that the authorities could exclude any undesirable person from entering. The term was discussed in *Sewell's* case, where Erle, C.J., said that it was not confined to places which are permanently open to the public but would include meadows where races or cricket matches were being held and churches and theatres during the time they are frequented. Lord Goddard, C.J., in *Glynn's* case, added the Zoo and exhibitions as places of public resort, but excluded the Royal Enclosure at Ascot as that is not open to the public but only to persons invited to go there. It is, however, open to question whether a church or theatre or cinema would be a place of public resort while it is closed to the public in view of the reference by Erle, C.J., to them "during the time they are frequented"; one may add that it is not an offence under the Larceny Act to break into a theatre or cinema though those who attack such premises can generally be charged with breaking into a store or shop inside and thus become amenable to punishment. Public houses, restaurants and shops, when they are open, are clearly places of public resort.

The term "place adjacent to a street or highway" was held by the High Court of Justiciary in *M'Intyre* v. *Morton* [1912] S.C. (J.) 58 to include the public rooms of an hotel at a railway station, where there were entrances from the street to the vestibule adjacent to these rooms.

Another portion of s. 4 of the Vagrancy Act reads: "Every person being found in or upon any dwelling-house, warehouse, coachhouse, stable or outhouse, or in any inclosed yard, garden or area for any unlawful purpose [shall be guilty of an offence]."

The same punishment and procedure apply for those offences as for the "suspected person" one. This offence is often called "being found on inclosed premises" but in fact, the words "inclosed premises" do not occur in the

section and a charge which merely alleged that the accused was found on inclosed premises (without naming them) for an unlawful purpose would not be good. It will be noted that the types of place or building are specified and a lock-up shop as such appears to have no protection under this provision. In *Hollyholmes* v. *Hind* [1944] K.B. 571 it was held that the entire building of a maisonette comprising several flats was a dwelling-house; in that case the accused had been found in the entrance-hall, and the High Court upheld his conviction although the hall was not in the occupation of the person alleged in the charge to be the occupier of the house, it being unnecessary to state who was the occupier. In *Knott* v. *Blackburn* [1944] K.B. 77 it was held that a railway siding enclosed on all sides was not an inclosed area. Lord Caldecote, C.J., said that "area" must be that part of the basement of a house which is open to the air, but the other judges suggested that the term "area" might have a rather wider meaning. In *R.* v. *Armstrong* (1954), Jo. Crim. L. 109, the Recorder of Scarborough held that the yard, garden or area must be that of one of the types of house mentioned in the section, but this decision has been the subject of some criticism (*The Solicitor* (1954), 100).

The unlawful purpose must be commission of a crime (*Hayes* v. *Stevenson* (1860), 25 J.P. 39), but the crime can be either a felony or a misdemeanour, e.g., assault or wilful damage. The accused must have been "found" in the premises, and in *R.* v. *Lumsden* [1951] 2 K.B. 513 it was held that, where there was no evidence that the accused had been in the building, the charge failed. He need not, however, have actually been caught inside the building. Where a man had been seen to go into premises and emerge a few minutes later, it was held that, to satisfy the words "found on the premises," it sufficed that he had been seen or clearly ascertained to have been on them (*Thomas* v. *Powell* (1893), 57 J.P. 329, not cited in *R.* v. *Lumsden, supra*). This provision of s. 4 of the Vagrancy Act is more fully discussed at (1947), Jo. Crim. L. 430, and, with reference to the point whether it extends to side passages and back passages, at 118 J.P. Jo. 117.

The terms of s. 28 (4) of the Larceny Act, 1916, are wider in some respects than those of s. 4, for that subsection provides that every person who shall be found by night in any building with intent to commit a felony therein shall be guilty of an offence. It refers, as will be seen, to "any building" but it is limited to "night," i.e., between 9 p.m. and 6 a.m., and to felonies. Further, the accused, unless he be a juvenile, must be committed for trial for this offence. A person found outside a building trying to get into it is not "found in" it (*R.* v. *Parkin* [1949] 2 All E.R. 651).

The Prevention of Crimes Act, 1871, s. 7, strikes at persons with previous convictions for crime who are found in suspicious circumstances in various types of building or place, and is wider than either s. 4 or s. 28. It is, however, little used in these days.

G. S. W.

A Conveyancer's Diary

VALIDITY OF LEASES GRANTED UNDER SETTLED LAND ACT POWERS

THE judgment of Sir Christopher Farwell, J., in *Kisch* v. *Hawes Bros., Ltd.* [1935] Ch. 102 contained some observations made *obiter* on the provisions of the Settled Land Acts relative to the tenant for life's power of leasing which have long been something of a puzzle. These observations were the subject of comment (also made *obiter*) in the Court of Appeal in the recent case of *Davies* v. *Hall* [1954] 1 W.L.R. 855, and p. 370, *ante*, but the comment seems to have done little if anything to unravel this puzzle.

The defendant company in *Kisch's* case was a successor in business to a certain firm. By a lease made in 1899 one *R* let a shop to this firm for a term of twenty-one years from the 25th December, 1899, at an annual rent of £150. *R* died in 1904, having by his will devised the shop upon trust for his wife for life, with remainder upon trust for the plaintiff for life, with remainder in trust for the plaintiff's children. In August, 1919, while the term granted by the 1899 lease was still in existence, the firm were minded to incorporate themselves as a limited company, and it was therefore proposed by them or on their behalf that *R's* widow, the first tenant for life of the premises under the limitations of *R's* will, should grant a new lease for a term to run from the termination of the then existing term at Christmas, 1920. This the tenant for life agreed to do, and a new lease was accordingly executed on the 9th October, 1919, on precisely the same terms as the then existing lease except that the lessee thereunder was the company and not the firm, and that the rent was increased from £150 to £160. The firm and then the company continued in occupation of the premises, first under the old lease and then under the new.

The widow of *R* died in 1933. The terms on which the company occupied the premises were then looked into on behalf of the plaintiff, who on the death of the widow became entitled to the premises for her own life, and as a result of this investigation a claim was made on her behalf to possession of the premises on the ground that the lease of 1919 was not a lease which complied with the provisions of the Settled Land Act, 1882, and was therefore invalid. The company by its defence pleaded simply that it was in possession of the premises. The effect of such a plea is to deny the plaintiff's title to the premises (R.S.C., Ord. 21, r. 21), and as a denial by a tenant of his landlord's title is a ground for forfeiture, the plaintiff by her reply claimed forfeiture and possession on that ground. At the trial of the action the defendant company applied for and obtained leave to amend this plea of possession *simpliciter* to a plea of possession under the lease of 1919, but Farwell, J., held that notwithstanding the amendment the defendant company could not escape from the result of its former plea. In his view, as soon as the defence was delivered, the plaintiff became entitled to forfeit the lease; she had made it plain by her reply that she would do so, and it was impossible by amending to destroy the effect of what had been done as soon as the defence had been delivered. On that short ground, therefore, the plaintiff was entitled to possession of the premises and the usual ancillary relief.

This is the whole of the actual decision in *Kisch's* case, but until the company had, by its ill-chosen plea of possession, deprived itself of any possibility of a successful defence, the ground upon which the plaintiff argued that she was entitled to possession was that the 1919 lease was an invalid lease for failure to comply with the requirements of the Settled Land Act, 1882. This point was fully argued on both sides, and in case the dispute should be taken to a higher court,

Farwell, J., felt that he ought to express his views on it. The expression of these views was thus plainly *obiter*, but nevertheless, having regard to the authority of the judge who gave voice to them, considerable weight has been attached to them since they were made known. The question of the validity of the lease of 1919 turned on the effect to be given to certain provisions of the Settled Land Act, 1882. These provisions were replaced by similar provisions contained in the Settled Land Act, 1925. In view of the lapse of time since this Act came into force, any similar problem which may now arise will almost certainly turn on the provisions of this later Act, and it is to these provisions that I will principally refer in my summary of this part of *Kisch's* case, except where a change in the law in 1925 makes it necessary to mention both the old and the new codes.

Section 41 of the Act empowers a tenant for life to grant leases of various lengths according to the type of lease, and s. 42 then goes on to prescribe certain conditions which such leases must satisfy. Every such lease must, among other things, be by deed, and be made to take effect in possession not later than twelve months after its date, *or in reversion after an existing lease having not more than seven years to run at the date of the new lease* (s. 42 (1) (i)). The provision as to reversionary leases here italicised is an addition made in 1925 which had no counterpart in the 1882 Act, under which, therefore, a lease for a term exceeding three years (for which special provision is made) granted by a tenant for life under his statutory powers had to take effect in possession not later than twelve months after its date. Another condition (s. 42 (1) (ii)) is that every such lease must reserve the best rent that can reasonably be obtained, regard being had to any fine or money laid out for the benefit of the settled land, and to the circumstances generally.

It was objected on behalf of the plaintiff in *Kisch's* case that the lease of 1919 was invalid because it was made in October, 1919, to take effect in possession at Christmas, 1920, that is, more than twelve months after its date, and alternatively that £160 was not the best rent that could reasonably be obtained. The defendant company in defence relied on s. 152 of the Law of Property Act, 1925, and what is now s. 110 of the Settled Land Act, 1925. The general effect of s. 152 (1) of the first of these Acts is that where a lease is granted in intended execution of any power of leasing which by reason of any failure to comply with the terms of the power is invalid, then as against any person entitled to the reversion the lease, if it was made in good faith and the lessee has entered, takes effect in equity as a contract for the grant of a valid lease under the power. Section 152 (2) further provides that where a lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant it at the date thereof, but the grantor's interest in the premises continues after the time when he might, in the exercise of the power, have properly granted a lease in like terms, the lease takes effect as a valid lease in like manner as if it had been granted at that time. These provisions were given a retrospective effect. Assuming that these provisions applied, the result of their application is self-evident: by virtue of s. 152 (1) the company would have had rights against the plaintiff as an equitable lessee, and under s. 152 (2), as the grantor (the first tenant for life) had lived until after the Settled Land Act, 1925, came into operation, which by amendment of the pre-existing law had given her power *qua* tenant for life to make a lease to take effect, in the circumstances, in reversion after the then existing lease, the company was a lessee under a valid lease at law.

Farwell, J., with some hesitation, assumed that s. 152 applied to the case, but even assuming that, it was in his judgment essential for the defendant company to prove that the lease was otherwise such as the first tenant for life had power to grant; and as he had no means of ascertaining whether the condition of what is now s. 42 (1) (ii) as to the best rent being reserved had been fulfilled, and as it was, in his judgment, for the defendant company to show that, it could not claim the benefit of s. 152.

On this point the defendant company relied on what is now s. 110 of the Settled Land Act, 1925, which, so far as material, provides that on a lease a purchaser (which includes a lessee) dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best rent that could reasonably have been obtained, and to have complied with all the requisitions of the Act. This provision, the plaintiff argued, did not assist the company where the lease on the face of it contravenes the Act. Farwell, J., did not accept this argument in its entirety, giving it as his view that s. 110 did not assist the company because it was on the company to prove that the lease was in all respects one which the tenant for life could have granted in 1919.

The logic of this part of the decision in *Kisch's* case is not easy to grasp. Section 110 only protects a lessee acting in good faith, and it is easy enough to see that if the lease shows on its face that it does not comply with any of the conditions which have been mentioned, the lessee is not acting in good faith and s. 110 does not protect him. It is, further, easy enough to see that a failure to comply with such conditions as appear in s. 42 (1) (i) of the Act, which relate to the form of the lease and the time when it takes effect in possession, must, or at any rate often will, appear on the face of the lease. But the condition in s. 42 (1) (ii) as to the best rent is another matter: whether the rent reserved was the best rent at the date of the lease must often be a matter of opinion.

In *Davies* v. *Hall* (which was decided on a point of pleading and in which consideration of the judgment in *Kisch's* case came up only incidentally), Somervell, L.J., appears to have felt this difficulty. He said of this passage from Farwell, J.'s judgment in the latter case that it was difficult to follow; in the learned lord justice's view, the facts in *Kisch's* case must have been very special to put the onus of proving that the best rent was reserved on the defendant company, and *prima facie* s. 110 could be relied upon against a party seeking to attack a disposition. Romer, L.J., added some comments in explanation of this part of the judgment in *Kisch's* case for the purpose of showing that the county court judge in *Davies* v. *Hall* had put too wide an interpretation on what Farwell, J., had said, but expressed no opinion on the correctness or otherwise of those *dicta* in the earlier case. There the matter rests at present.

"A B C"

Mr. HERBERT WYKEHAM LYDALL, solicitor, of Bedford Row, W.C.1, was awarded the O.B.E. in the Birthday Honours list. He was admitted in 1893.

Mr. PETER YORKE, solicitor, of Ware, was awarded the O.B.E. in the Birthday Honours list. He was admitted in 1932.

The Queen has been pleased to appoint Mr. PETER STANLEY PRICE to be Recorder of the Borough of Pontefract, with effect from 14th June.

Mr. GEORGE HAROLD WILLCOX, solicitor, of Birmingham, has been appointed a director of the Midland Trust, Ltd.

Landlord and Tenant Notebook

STATUTORY LIABILITY FOR MAINTENANCE

THE amount of interest taken by standard landlord-and-tenant law textbooks in those provisions of the Housing Act, 1936, and Public Health Act, 1936, which affect landlords varies, e.g., one such book deals fairly fully with the one statute and barely mentions the other. In this article, I propose briefly to draw attention to the following questions: Who must be notified or called upon; who is made liable for what; and against whom can an authority, in the last resort, take proceedings?

The Housing Act, unlike the Public Health Act, authorises the authority to deal with two different persons according to circumstances. There is "the person having control of the house"; and there is the "owner of the house." It is the former who is to be served with notice to execute works necessary to make a house fit for habitation (s. 9), though copies may be served on any other person having an interest; and "the person who receives the rack-rent of a house, whether on his own account or as agent or trustee for any other person, or who would so receive it if the house were let at a rack-rent, shall be deemed to be the person having control of the house" (s. 9 (4)) and "'rack-rent' means rent which is not less than two-thirds of the full net annual value of the house" (*ib.*). Value has been held to mean that of the freehold (*Bacon* v. *Grimsby Corporation* (1949), 65 T.L.R. 709).

But when demolition or closing are resorted to, both the person having control of the house and any other person who is an owner thereof (and, so far as it is reasonably practicable to ascertain such persons, every mortgagee thereof) are to be served with notice of intention and invited to submit suggestions (ss. 11-12). And in this Act an owner is "a person other than a mortgagee not in possession who is for the time being entitled to dispose of the fee simple in the building or land, whether in possession or in reversion, and includes a person holding or entitled to the rents and profits of the building or land under a lease or agreement, the unexpired term whereof exceeds three years."

The provisions for service in the Housing Act, besides authorising service by delivery to the person concerned, leaving it at his usual or last known place of abode, sending it there by registered post, etc., provide in the case of an owner —but not in the case of a person having control— for service by delivery to some person on the premises or, if there is no one there to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Comparing the position at this stage with that obtaining under the Public Health Act, 1936, where a landlord's interests are affected by the "statutory nuisance" provisions (Pt. III) it is because he is "owner," and there is no machinery for calling upon a "person having control" as such. And under the Public Health Act an owner is "the person for the time being receiving the rack-rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if those premises were let at a rack-rent" (s. 343 (1)). This definition, then, substantially corresponds to that of "the person having control" in the Housing Act, and not with the latter's idea of "owner." And though in general a nuisance abatement order must be addressed to the person by whose act, default or sufferance the nuisance arises or continues, it must be served on the "owner" when it arises from a defect of a structural character; thence the importance to landlords.

So much for service and notification. At this stage, the Housing Act gives the recipient a right of appeal to the county court (s. 15); under the Public Health Act, the owner who does not agree that there is a nuisance as alleged has to wait till a complaint is made to the justices.

If there be no successful appeal against a notice to execute works or a demolition or closing order under the Housing Act, the authority may carry out the work themselves and recover the expense from the recipient. In the case of notices to execute works, s. 10 (3) concludes with a proviso which was an innovation and is of some importance to solicitors acting for landlords: "if the person having control of the house proves that he (*a*) is receiving the rent merely as agent or trustee for some other person; and (*b*) has not, and since the date of the service on him of the demand has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority; his liability shall be limited to the total amount of the money which he has, or has had, in his hands as aforesaid." This proviso disposed of the law laid down (by a majority of the Court of Appeal) in *Watts* v. *Battersea Borough Council* [1929] 2 K.B. 63 (C.A.), in which a solicitor acting for the widow of a freeholder whose will was disputed, and who had had occasion to give instructions to the regular rent-collector and received small payments (balances after outgoings had been discharged) from him, was held to be "owner," the Housing Act then in force defining the term by reference to the Public Health Act, 1875.

But there is, strange to say (the Acts came into force on the same day !), no corresponding proviso in the Public Health Act, 1936, and if under that Act the authority successfully takes proceedings against a person correctly served a nuisance order is made against that person (s. 94); if the order is not carried out, the authority may abate the nuisance (s. 95 (2)) and recover reasonable expenses from the respondent (s. 96).

It may be mentioned here that the Public Health (London) Act, 1936, contains provisions corresponding to those of the Public Health Act, 1925 (which does not apply to the metropolis), and that London landlords are, further, often affected by the comprehensive London Building Acts (Amendment) Act, 1939. The latter gives no general definition of "owner," but sometimes the expression is defined for the purposes of a particular part: e.g., Pt. V (means of escape in case of fire), where it uses (s. 33) the "person for the time being receiving the rack-rent of the premises whether on his own account or as agent or trustee, etc.," type of definition but without any proviso such as is found in the above cited Housing Act, s. 10 (3). In Pt. XI, however, "Legal Proceedings," there is a general provision under which any occupier of premises and any person directly or indirectly receiving rent may be called upon to state in writing the nature of his own interest and the name and address of the freeholder, etc. (s. 126).

Lastly, I would mention briefly that the Housing Act, 1936, expressly saves any rights which landlords may have against their tenants (s. 19 (2)). The Public Health Act, 1936, is silent on the subject, but, in my submission, would not prevent any landlord liable to a local authority from enforcing a valid claim against his tenant (see 92 SOL. J. 369). As regards "weekly properties," however, *Warren* v. *Keen* [1953] 3 W.L.R. 702 (C.A.) has shown that, where there is no express covenant, the landlord must not expect too much (see 97 SOL. J. 757).

R. B.

HERE AND THERE

THE ART OF GOVERNMENT

EVERYBODY knows that the art of government depends on three factors: first, the will, the wishes or the whims of the group (whoever they are) who are in a position to give the orders or get the orders given; secondly, the convenience or the latest ambitions of those they employ to get them carried out; and, thirdly, the inertia of the great mass of the public who do what they're told, partly because it's the line of least resistance and partly because they don't know what it's all about any way. Those who give the orders and those who transmit the orders work in partnership. Those who take orders, well, the only problem they present is: How much will they stand for before they start making a nuisance of themselves? It's just as well to let them have their say; it gets a grievance off the chest, it shows which way the wind blows, and, on the whole, the more they talk the less they do. Anyhow, it's practical for a good horseman to be considerate to his mount in case it might go wild and roll on him or get on its hind legs and slide him off. The great experts in preventing or forestalling anything of the kind are the middle men, the transmitters of orders. If they have strong, vigilant masters, it's their masters' orders they transmit. In so far as their masters don't keep an eye on them, they use the order-transmitting machinery for their own purposes. Thus, while they may have to put up with interference from above, they generally manage to organise a vested interest in getting their own way (for even the most vigilant masters can't watch them at every point) and the one thing they can't stand is interference from below. So how to smother that interference? By "due course" and "the usual practice" and the masses of departmental procedure and the ambiguity and evasion and *suppressio veri* of official correspondence. There's nothing to be specially shocked at in all this. If you behave like a sheep you're sure to be rounded up by a sheep-dog. And some people like being sheep anyway; the life has a very high degree of social security. But others don't like it and the fun really starts when the sheep-dog, every now and then, chases the wrong sort of animal—a Wat Tyler or a Hampden or a Cobbett or a Commander Marten.

BEACON OR BONFIRE?

WHETHER Commander Marten will really succeed in lighting the beacon of a new freedom on Crichel Down or merely a rather spectacular bonfire will depend on how far he can persuade the mass of the people of two things: first, that they are responsible human beings and not tame animals on a Whitehall model farm, and, secondly, that his fight is their fight. As to the first, there are far too many members on both sides of the Parliament House who believe in the supremacy of the administration over the individual to a degree that combines papal infallibility and the old divine right of kings. And if that trap, baited as it is with "free gifts" from the Ministry, has been as generally appreciated as it has, the reason is that to the ordinary little man it does not seem that the calls to freedom, as usually sounded, have anything much to do with him. If the struggle is between two remote powers far above his head what business is it of his until it is brought down to earth? If the question were only whether a Civil Service farmer or a wealthy private farmer is going to have Crichel Down, what difference can it make to his life? It does make a difference when the private farmer behaves like a friend and neighbour, but far too many landowners aren't doing that. Have you noticed how almost all along the South Downs the landowners are tractor-ploughing bridle paths and tracks on every conceivable pretext? Oh, who will o'er the Downs so free? Not many of us, with miles of barbed wire cutting off every advance and the immemorial smooth sheep walks turned to the stoniest of furrowed wheatlands. To the little man who's shut out it doesn't really matter much who's done it.

PEEP BEHIND THE SCENES

OF course, the growth of a despotism, official or unofficial, always matters and it's because it matters that it's worth wondering why everybody doesn't spontaneously leap at its throat. This is certainly the time to do something about the insidiously well-meaning tyranny of the over-centralised State. It is not often that circumstances combine to allow a judicial inquiry to penetrate so far the defences of Civil Service reticence, "the passionate love of secrecy inherent in so many minor officials," noted by Sir Andrew Clark. No writer of fiction could have invented a more effective satire on bureaucratic government than the reality which its own practitioners revealed at the hearing. There was the letter on what was to be done "at least to appear to implement" the promises made to the applicants for the land. There was the Land Commission's infatuation with its scheme for a model farm. "In the eagerness to ensure that they were not deprived of the opportunity they adopted an irresponsible attitude towards the expenditure of public money and they were not always frank with the Ministry." There was the attitude of hostility in the officials towards the former owner of the land "engendered solely by a feeling of irritation that any member of the public should have the temerity to oppose or even question the acts or decisions of officials of a Government or State department." Of course, it's all very natural. Officials, like everybody else, want their own way in the easiest possible way, but it's other people's business they're minding and other people's ways that matter. Integrity in their case means being impersonal, and mental integrity is just as important as not taking bribes. Unfortunately it's a lot more difficult, too.

RICHARD ROE.

OBITUARY

MR. R. CLAYTON

Mr. Roger Clayton, retired solicitor, of Newcastle-on-Tyne, died on 11th June, aged 77. Admitted in 1903, he was a former president of the Newcastle Law Society and for many years was Clerk of the Tyne Pilotage Authority.

MR. A. H. DRAPER

Mr. Alfred Harry Draper, solicitor, of London, S.W.1, and E.18, died on 14th June, aged 46. He was admitted in 1944.

MR. J. A. PAYNE

Mr. John Annesley Payne, solicitor, of Llandudno and Colwyn Bay, died recently, aged 62. He was admitted in 1915.

MR. S. P. THOMPSON

Mr. Stanley Pickard Thompson, solicitor, of Epsom, Ewell and Radlett, died on 13th June, aged 64. He was admitted in 1914.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

DISCRETION OF COURT OF APPEAL IN MATRIMONIAL CAUSES

Moor *v.* Moor

Eversheд, M.R., Denning and Hodson, L.JJ.

25th May, 1954

Appeal from Judge Kingsley Griffith sitting as Special Commissioner at Kingston-upon-Hull.

The parties were married in 1929 and in 1936 the wife left the husband and shortly afterwards contracted an association with another man with whom she had lived ever since and by whom she had had two children. Subsequently, the husband began an association with a single woman and had by her four children. The wife petitioned for divorce on the ground of the husband's adulterous association and at the same time she asked the court to exercise its discretion in her favour. The wife gave no evidence of the reason why she left her husband except that they had had many quarrels. The commissioner refused to exercise his discretion in the wife's favour and dismissed her petition, primarily on the ground that she was the party who had broken up the marriage. The wife appealed.

EVERSHED, M.R., said that the wife's case had been presented most casually to the commissioner and he had been left with no admissible explanation as to why she had left her husband except that there had been a number of quarrels. She had been asked a leading question whether she had suspected that her husband was having relations with someone else, but the form of the question deprived her answer of any weight, especially as she was not asked what, if any, was the basis for that suspicion. The inadmissibility and uselessness of such questions had been pointed out before, but nobody appeared to have paid any regard to what had been said, both by the President and by the Court of Appeal. The commissioner had refused to exercise his discretion in favour of the wife and the Court of Appeal could not substitute its discretion for that of the judge, unless he had failed to exercise his discretion judicially, as by misdirecting himself in some material particular. Here he had not misdirected himself in taking into consideration the circumstances in which the marriage had broken down, for it was clear that he was attempting, in the words of Lord Simon, L.C., in *Blunt* v. *Blunt* [1943] A.C. 517, 525, to hold a " true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of the union which has utterly broken down." The manner in which the commissioner had exercised his discretion should not, therefore, be interfered with.

DENNING, L.J., agreed.

HODSON, L.J., agreed, adding that he was not seeking to say that in no case could a party who was the original wrongdoer rightly appeal to the court for the exercise of its discretion. Appeal dismissed.

APPEARANCES: *Laskey* (*Smith & Hudson*, for *Payne & Payne*, Hull); the husband did not appear and was not represented.

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 927

QUEEN'S BENCH DIVISION

MASTER AND SERVANT: MASTER LIABLE IN DAMAGES FOR SERVANT'S NEGLIGENT DRIVING: WHETHER TERM IMPLIED IN CONTRACT OF SERVICE THAT MASTER SHOULD EFFECT POLICY OF INSURANCE TO INDEMNIFY SERVANT

Semtex, Ltd. *v.* Gladstone

Finnemore, J. 9th April, 1954

Action tried at Birmingham assizes.

The defendant, who was the plaintiffs' servant, was employed, *inter alia*, to drive some of his fellow employees to and from their work in a shooting brake belonging to the plaintiffs. The shooting brake was at all material times insured by the plaintiffs in compliance with the Road Traffic Act, 1930. Due solely to the defendant's negligence the shooting brake was involved in an accident in which one of the passengers was killed and others were injured. Those injured and the representatives of the deceased sued and were awarded damages against both the plaintiffs and the defendant. In an action by the plaintiffs for an indemnity or for a 100 per cent. contribution from the defendant, the defendant contended that it was an implied term in his contract of employment that the plaintiffs should keep in force a policy of insurance indemnifying themselves and him against liability for death or bodily injury caused by his driving the brake, and that the plaintiffs' claim was in breach of such implied term.

FINNEMORE, J., said that there was no doubt that a master could sue a servant for the negligent performance of the master's business. The next question was whether a master could sue a servant where he had been called on to pay money as an employer in respect of the servant's torts. *Jones* v. *Manchester Corporation* [1952] 2 Q.B. 852 showed that where a master and his servant were jointly concerned in a tort they could, under the Law Reform (Married Women and Tortfeasors) Act, 1935, bring an action for contribution; Hodson, L.J., preferred a different ground, that a negligent servant was under an implied term in his contract to exercise reasonable skill according to his calling. But the result was the same, whether the servant's liability arose out of breach of contract or under the Act of 1935, as in the latter case justice would require a contribution of 100 per cent. As to the alleged implied term to insure, it appeared from *Gregory* v. *Ford* [1951] 1 All E.R. 121 that there was to be implied in the contract of service that the law should be complied with, i.e., that the employer should comply with the insurance provisions in the Road Traffic Act, 1930; but there could not be implied a term that the servant was to be indemnified against liability. The plaintiffs had an insurance policy which seemed to comply with the Act; the company had, however, stated that they did not consider themselves liable to indemnify the defendant; the reasons for this attitude had not been disclosed, but the policy on its face seemed to comply with the implied term alleged by the defendant, although the duty of the plaintiffs was limited to their duty under the Road Traffic Act. In *Digby* v. *General Accident Assurance Corporation, Ltd.* [1943] A.C. 121 it was held that a chauffeur was entitled to indemnity from his employer's insurers for damages which he had to pay to her in respect of injuries sustained in a collision between her car and another in which both drivers were negligent, the policy seeming to be indistinguishable from that in suit. It might well be, therefore, that the defendant could recover under the plaintiffs' policy. Judgment for the plaintiffs.

APPEARANCES: *R. M. Everett*, Q.C., and *E. G. H. Beresford* (*Buller, Jeffries & Kenshole*, Birmingham); *Ryder Richardson*, Q.C., and *A. E. James* (*Blewitt & Co.*, Birmingham).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 945

CONTRACT: SALE OF WHEAT c.i.f.: TIME FOR PROVIDING BANK GUARANTEE

Sinason-Teicher Inter-American Grain Corporation *v.* Oilcakes and Oilseeds Trading Co., Ltd.

Devlin, J. 26th May, 1954

Case stated by arbitrators.

By a contract in writing made on 11th August, 1952, an English company agreed to buy from an American corporation a quantity of Canadian barley for ultimate resale in Western Germany. The contract provided for shipment during October/November, 1952, payment to be net cash in London upon first presentation of documents, the buyers to give the sellers through their London bank a guarantee that the documents would be taken up on first presentation. No time was stipulated in the contract as to the date of the guarantee although the sellers alleged that it was agreed between the parties that the guarantee should be furnished by 9th September, 1952. On 10th September the sellers purported to cancel the contract alleging that they were entitled so to do as the guarantee had not been received. On 10th September the buyers' London bank informed the sellers that an irrevocable letter of credit had been opened by the buyers in favour of the sellers, but the sellers maintained their refusal to carry out their

obligations under the contract and on 16th September the buyers accepted the sellers' repudiation and referred the matter to arbitration, in accordance with the rules of the London Corn Trades Association as provided by the contract. At the hearing of an appeal from the umpire's decision, awarding damages to the buyers for the wrongful repudiation of the contract by the sellers, the appeal committee found that no time had been agreed for the provision of the guarantee and in so far as it was a question of fact they found and in so far as it was a question of law they held that the buyers' obligation was to provide the guarantee within a reasonable time before the shipment date, namely 1st October, 1952, and that such reasonable time had not arrived by 10th September. The sellers appealed.

DEVLIN, J., said that the contract stated no date when the guarantee was to be furnished, so that the time must be reasonable. The sellers contended that the guarantee should be given as soon as reasonably possible; the buyers contended that either the guarantee should be available by the first shipment date, 1st October, or it should be available a reasonable time before, and that such reasonable time had not arrived by 10th September. In *Pavia & Co. S.P.A.* v. *Thurmann-Nielsen* [1952] 2 Q.B. 84 it was held that a buyer should open a letter of credit by the first shipment date provided by the contract. They contended that a bank guarantee was the same as a letter of credit, so that the principle of that case applied. The sellers contended that a bank guarantee was essentially different from a letter of credit; that they wanted to know as early as possible that when they tendered documents they would have the protection of the guarantee; their contentions were tantamount to saying that the guarantee was a guarantee of the performance of the contract; but all that was to be guaranteed by the bank was that the documents would be taken up on presentation. No doubt legally a bank guarantee was not the same as a letter of credit, as the bank only became secondarily liable if the buyers failed to fulfil their obligation; but commercially they should be treated in the same way, and what was a reasonable time for tendering was a question of fact to be measured in the light of the commercial purpose of the contract. The guarantee must be there before the documents were presented, and it would not do to tender it the day before. It was to be measured, as the buyers contended, in relation to the event guaranteed; it must be available before some event, such as the shipment, which obviously led up to the presentation of the documents. The conclusions of the appeal committee were right, and the sellers were not entitled to treat the contract as determined on 10th September. Judgment for the buyers.

APPEARANCES: *T. G. Roche* (*Thomas Cooper & Co.*); *E. W. Roskill*, Q.C., and *R. A. MacCrindle* (*Richards, Butler & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 935

PROBATE, DIVORCE AND ADMIRALTY DIVISION

LEGAL AID: COSTS: UNDEFENDED DIVORCE OUT OF LONDON

Self *v.* Self

Sachs, J. 26th May, 1954

Summons for review of a taxation by the Brighton district registrar.

On 17th November, 1953, counsel with chambers in London appeared for a petitioner in an undefended divorce suit heard in Brighton. On the taxation under Sched. III to the Legal Aid and Advice Act, 1949, the fee on brief was reduced from seven guineas to five guineas. Objection to the taxation was primarily taken on the ground that it had been ascertained that the fee had been cut down owing to the belief of the district registrar that there had in fact been established in Brighton a local Bar. Evidence was given that no such local Bar was recognised by the South Eastern Circuit. The district registrar commented on the objection that it was very usual to allow a fee of five guineas as was done in this case, and continued: "Whether or not there is technically a local Bar has no bearing on the matter. The fact is, that there are counsel with chambers in Brighton willing to accept briefs of this kind, and consequently there is no justification for allowing an increased fee simply on the grounds that counsel is necessarily faced with the inconvenience of travelling from London."

SACHS, J., said that for the purpose of this judgment he was assuming that the registrar at Brighton had been right when he said that the case involved no unusual complications and might be regarded as one of a normal type. The position as regards counsel's brief fees on undefended petitions heard in London was that no one had been able to inform him of any case in which, on a taxation under Sched. III to the Act of 1949, a lesser sum had been allowed than five guineas. The present petition had been heard in Brighton, and it was plain that the calls upon a member of the Bar who undertook to conduct a petition there were both greater as regards expense and time than if he had been called upon under the Act to conduct such a petition in London. The only suggestion made by the registrar to support the view that he should allow no more than five guineas was that there were counsel with chambers in Brighton willing to accept briefs on undefended petitions, and that it would be wrong, therefore, to allow a fee on the basis that counsel came, as was the fact, from London. Section 6 (4) of the Act of 1949 specifically reserved the right of litigants reasonably to select their own counsel, and no registrar had a right, in effect, to dictate to litigants that their choice of counsel in a High Court matter should be restricted. Such a restriction would strike in one respect at the basis of the Legal Aid Scheme which was intended to put the assisted litigant upon the same footing, including choice of counsel, as an unassisted litigant who had reasonable means with which to pursue his remedies or his defences. In those circumstances, it was clear that the Brighton registrar had gone wrong in principle. There was an alternative way of putting the matter. The result of the taxation of the registrar had been to fix the fee of an appropriately selected counsel at a figure which did not represent a fair and reasonable remuneration for work done in the normal course of practice. It was not a proper exercise of judicial discretion so to assess their fees as to deprive those who did such work under the Act of 1949 of the 85 per cent. of that fair and reasonable remuneration which the Act provided under Sched. III. Counsel, by putting their names on a panel, were in fact obliged to take such work as might be offered to them in the localities which the panel served. The registrar had gone wrong in principle, and he (his lordship) would allow the figure which, upon inquiry, appeared to be the normal and reasonable fee, that was to say, seven guineas.

APPEARANCES: *J. E. S. Simon*, Q.C., and *R. T. Barnard* (*Hancock & Scott*, for *Bunker & Co.*, Hove).

[Reported by JOHN B GARDNER, Esq., Barrister-at-Law] [3 W.L.R. 119

DIVORCE: RIGHT TO BEGIN

Arding *v.* Arding

Karminski, J. 27th May, 1954

Petition for divorce.

A husband by his petition prayed for a decree of divorce on the ground of desertion, alleging that his wife had left him; the wife by her answer admitted leaving the husband, but alleged that she had just cause for doing so. It was submitted on her behalf that her counsel had the right to begin, for although that part of the case upon which a decree, if granted, must be founded must be proved to the satisfaction of the court, it did not follow that the burden of establishing all issues was upon the petitioner. In the present case (it was submitted) the real issue upon the pleading was whether the wife had just cause for leaving.

KARMINSKI, J., said that the ordinary course should be followed. The burden of proof was on the petitioner in view of s. 4 of the Matrimonial Causes Act, 1950, and he should therefore begin.

APPEARANCES: *H. S. Law* and *D. R. Ellison* (*Bulcraig & Davis*); *H. B. Grant* (*Blyth, Dutton, Wright & Bennett*, for *Johnson, Mileham & Scatliff*, Brighton).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 944

DIVORCE: JURISDICTION: "ORDINARY RESIDENCE"

Stransky *v.* Stransky

Karminski, J. 4th June, 1954

Undefended petition for divorce.

A wife married to a Czecho-Slovak presented a petition for divorce on the ground of adultery in July, 1953. The husband had not at that time acquired a domicile of choice in England. During the preceding three years the parties had spent in all some nineteen months in Munich, where the husband was employed until October, 1952, but throughout the three years the wife had maintained a flat in London where the parties had lived from time

to time between 1948 and 1952, to which the wife had also returned on occasions without the husband, and where the wife was still living at the time of the hearing of her petition. She never let the flat and kept it ready for occupation during the absences abroad. The assistance of the Queen's Proctor was invoked in argument. *Cur. adv. vult.*

KARMINSKI, J., reading his judgment, referred to *Pickles* v. *Foulsham* [1923] 2 K.B. 413; 9 T.C. 261, 274, *Levene* v. *Inland Revenue Commissioners* [1928] A.C. 217, 222, and *Inland Revenue Commissioners* v. *Lysaght* [1928] A.C. 234, 244, and to the discussion in those cases of the meaning of the words "ordinarily resident" in cases under the Income Tax Acts. After distinguishing upon the facts the decision of Pilcher, J., in *Hopkins* v. *Hopkins* [1951] P. 116, his lordship said that it was to be observed that s. 18 of the Martimonial Causes Act, 1950, used the term "resident" as a requirement at the time of the institution of the suit, and the term "ordinarily resident" as a requirement during the preceding three years. The use of the two terms was neither meaningless nor accidental. Clearly, mere temporary absences from England, such as a holiday abroad, would not make a gap in the period of ordinary residence. Nor would a longer gap of some months, such as one caused by a journey overseas by a wife accompanying her husband on a business trip, necessarily break the period of ordinary residence. In *Macrae* v. *Macrae* [1949] P. 397, 403, Somervell, L.J., had emphasised the importance of a place and of a house, though he was not making those factors the only tests in every case. But one of the tests in the present case was to find the answer to this question: Where, between 28th July, 1950, and 28th July, 1953, was the wife's real home? The flat was kept ready for occupation and never let, and the wife returned there whenever circumstances permitted. Her long sojourns in Munich were accidental in the sense that they were dictated by the exigencies of the husband's work, and there was no intention on the wife's part to make Munich her home for an indefinite period. He (his lordship) was satisfied that the wife had been ordinarily resident in England for a period of three years immediately preceding the commencement of these proceedings, and the court had, therefore, jurisdiction to dissolve her marriage with the husband. Decree *nisi*.

APPEARANCES: *Neil Lawson* (*Edwin Coe & Calder Woods*); *Colin Duncan* and *Hoolahan* (*The Queen's Proctor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 123**

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: PLEA OF GUILTY: APPLICATION TO WITHDRAW BEFORE SENTENCE

R. *v.* McNally

Lord Goddard, C.J., Hilbery and Havers, JJ.

24th May, 1954

Appeal against conviction.

The appellant was indicted with a number of other men, only one of whom, *S*, pleaded not guilty, on a charge of warehouse-breaking and housebreaking. The pleas were taken on the first day of the Manchester Winter Assizes before Jones, J., but sentences were not pronounced until after the trial of *S*, when the appellant and the other accused were brought up one by one to be sentenced. When brought up the appellant told the judge that he wished to change his plea from guilty to not guilty. The appellant, who had several previous convictions, had been caught red-handed by the police, and had pleaded guilty without any qualification, and he had also pleaded guilty before the magistrates. The judge did not ask him why he wished to change his plea but told him that he only wanted to give trouble, and refused to allow him to change his plea. He was sentenced to seven years' imprisonment. His ground of appeal was that the judge should have asked him the reason for wishing to change his plea, and that in failing to ask this question the judge had not properly exercised the discretion vested in him whether or not to accede to the appellant's request, and that, accordingly, the court should grant a *venire de novo*.

LORD GODDARD, C.J., said that the question whether a plea might be withdrawn or not was entirely one for the trial judge. If there was some question of mistake or misunderstanding, it would be no doubt right to allow a withdrawal. *R.* v. *Blakemore* (1948), 33 Cr. App. R. 49, where a plea of guilty was withdrawn after judgment, ought not to be followed. In *R.* v. *Plummer* [1902] 2 K.B. 339 the Court of Crown Cases Reserved stated categorically that it could not be done; and *R.* v. *Sell* (1840), 9 C. & P. 346, showed that there was no power to alter a plea after sentence. In the present case the judge had exercised his discretion rightly. It was true that the prisoner was not asked what his grounds were, but it was quite obvious that he could have no grounds. Appeal dismissed.

APPEARANCES: *T. R. Fitzwalter Butler* (*Registrar, Court of Criminal Appeal*); *Sir N. Goldie*, Q.C., and *Sidney Smith* (*P. B. Dingle*, Town Clerk, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 933**

CHICHESTER CONSISTORY COURT

ECCLESIASTICAL LAW: DISPLAY OF ROYAL ARMS WITHIN CHURCH: WHETHER LAWFUL WITHOUT SOVEREIGN'S AUTHORITY

***In re* West Tarring (Rector and Churchwardens)**

Macmorran, Ch. 30th March, 1954

Petition for a faculty.

The rector and churchwardens of the parish of West Tarring petitioned for a faculty to authorise the display of the royal arms over the vestry door in the parish church; the petition was supported by the parochial church council, and approved by the diocesan advisory committee. No appearance in opposition was entered.

MACMORRAN, Ch., said that the registrar had received a circular from the Home Office, which stated that the royal arms were the personal emblems of the Sovereign and might not be reproduced without the Queen's consent, in the exercise of which the Home Secretary was the responsible minister to advise and that permission was given only in exceptional circumstances. The Home Office, in response to an inquiry sent by him (the Chancellor) had replied that the practice of displaying the royal arms in churches "had very largely fallen into desuetude during the past hundred years," and that it was felt that the existence of the practice should not be taken as overriding the rule laid down in the circular. There was, therefore, a claim by a Government department that the Home Secretary's consent was necessary; whereas, in law, it was a matter for the decision of the ecclesiastical court. The opinion expressed by the Home Office constituted an unwarranted interference by a department of State with a court of competent jurisdiction. Nevertheless, the Home Secretary had been invited to appear and oppose, but had intimated that the question of the issue of a faculty was not one which concerned him. The royal arms might be lawfully displayed to mark the presence or authority of the sovereign, as in courts of law and on the notepaper of the Home Secretary himself. Their display in churches, which went back to Henry VIII, marked the royal supremacy. In a number of books dealing with churches and ornaments, there were illustrations and statements which showed that the practice had had a continuous existence since the time of Henry VIII (except during the reign of Mary Tudor), and the suggestion that the custom had "fallen into desuetude" could not be sustained for a moment. The proposal was lawful. Faculty granted.

APPEARANCES: The petitioners in person.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 923**

SOUTHWARK CONSISTORY COURT

ECCLESIASTICAL LAW: DISPLAY OF ROYAL ARMS AND OTHER ARMORIAL BEARINGS: WHETHER CONSENT OF BEARER NECESSARY

***In re* St. Paul's Church, Battersea**

Garth Moore, Ch. 26th May, 1954

Unopposed petition for a faculty.

The churchwardens and secretary of the parochial church council sought a faculty to cover a number of items connected with the decoration of the church, the proposals having the support of the whole of the parochial church council and of the diocesan advisory committee. The only matters which came to be considered in open court were the proposals to introduce certain heraldic devices, namely, the royal arms signifying the

royal supremacy, to be displayed on the organ loft, and six decorative shields to be displayed in the chancel, three on either side of the altar. The shields were to display the "Arms of the Kingdom of England," i.e., the first and fourth quarters of the royal arms; the St. George's Cross, as the arms of the Church of England, and certain municipal and diocesan arms.

GARTH MOORE, Ch., said that there had been a circular from and correspondence with the Home Office, but the Home Secretary had not thought fit to appear. In England there appeared to be no proprietary right in heraldic emblems; if so, it was a matter of discretion for the court whether to grant a faculty or not, though it would be slow to do so where a reasonable objection was put forward. The royal arms were to be introduced not as pure decoration, but to signify the royal supremacy. They had been so displayed for four centuries, and it seemed that their introduction had sometimes been enforced at the instigation of the Crown. The jurisdiction of the court had never been questioned until the recent action of the Home Office. Although it was right that that department should have the opportunity of appearing, if they did not such faculties would be granted in the absence of convincing argument to the contrary. Such an attitude was supported by the recent decision in *In re West Tarring* [1954] 1 W.L.R. 923 (*ante*, p. 440), where identical circumstances arose. With regard to the so-called "arms of England," these did not indicate the royal supremacy, but were part of a general decorative scheme, and it was consistent with principle that the consent of the bearer, the Sovereign, should be obtained: that part of the application would be adjourned for consent to be obtained. As the municipal bodies concerned had given consent, leave would be given for their arms to be introduced. Although the diocese and province had not been asked to consent to the introduction of their arms, there could be no reasonable ground for refusal, as the church was a part of both. The St. George's Cross did not seem to belong to anyone, but was used to signify the Church of England. There was, therefore, no reason why it should not be introduced. Faculties granted accordingly.

APPEARANCES: The petitioners in person.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 920

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read Second Time :—

Beit Trust Bill [H.L.] [15th June.
Hire-Purchase Bill [H.C.] [15th June.
Housing (Repairs and Rents) (Scotland) Bill [H.C.] [17th June.
Industrial and Provident Societies (Amendment) Bill [H.C.] [17th June.
London County Council (Money) Bill [H.C.] [15th June.
Post Office Savings Banks Bill [H.L.] [17th June.
To consolidate the enactments relating to Post Office Savings Banks.
Trustee Savings Banks Bill [H.L.] [17th June.
To consolidate the enactments relating to trustee savings banks.

Read Third Time :—

Birmingham Corporation Bill [H.L.] [17th June.
Housing Repairs and Rents Bill [H.C.] [15th June.
Manchester Corporation Bill [H.L.] [17th June.

B. DEBATES

On the second reading of the **Hire-Purchase Bill** VISCOUNT FURNESS said its principal object was to abolish the separate financial limit of £50 for motor vehicles, to raise the limit for livestock from £500 to £1,000, and that of £100 for other goods to £300. The reason for a special limit for livestock was that the goods were likely to appreciate in value during the period of the hire-purchase agreement.

Clause 2 would amend the provisions regarding recovery of the goods by the owner. It gave the hirer the right to pay the outstanding balance (after the court had made a "postponed order") of the hire-purchase price instead of handing over the goods in compliance with a delivery warrant issued under the court's order. Subsection (3) would enable the county court, where the claim was admitted and an offer of payment made which the plaintiff accepted, to enter judgment forthwith without an inquiry as to means. Any guarantor, however, would have an opportunity of appearing. At a later stage an amendment, approved by the Lord Chief Justice, would be introduced to alter the definition of "hire-purchase price" to include a deposit paid to a dealer. [15th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Dunoon Burgh Order Confirmation Bill [H.C.] [16th June.
To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Dunoon Burgh.

Read Second Time :—

Hartlepool Port and Harbour Commission Bill [H.C.] [15th June.
Royal Warehousemen Clerks and Drapers' Schools Bill [H.L.] [15th June.
Tees Conservancy (Deposit of Dredged Material) Bill [H.L.] [15th June.

Read Third Time :—

Edinburgh Corporation Order Confirmation Bill [H.C.] [17th June.
Ferguson Bequest Fund Order Confirmation Bill [H.C.] [18th June.
To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the Ferguson Bequest Fund.
Landlord and Tenant Bill [H.C.] [18th June.
Walsall Corporation Bill [H.C.] [15th June.

In Committee :—

Finance Bill [H.C.] [16th June.

B. DEBATES

On the committee stage of the **Landlord and Tenant Bill** the HOME SECRETARY introduced three amendments to cl. 23 (tenancies to which Pt. II applies). The first provides that living accommodation occupied by an employee of the tenant should be protected under Pt. II only if it is comprised in the same tenancy as the tenant's business premises. The second amendment, Sir David Maxwell Fyfe said, substantially widened the scope of Pt. II in relation to mixed tenancies comprising both business premises and living accommodation occupied by the tenant. It extended protection to the living accommodation as well as the business accommodation, except where the business user was in breach of covenant. The amendment would not apply to premises within the Rent Acts, as they were already protected by those Acts. The third amendment would exclude from Pt. II a tenancy where the business use was carried on in breach of covenant against business use and where the landlord had not consented to or acquiesced in the breach.

To cl. 37 (compensation where order for compensation precluded in certain cases) amendments were made which slightly relax the conditions to be complied with by the tenant in order to qualify for the double rate, that is, twice the rateable value. It would not now be necessary, in the case of mixed premises, that the residential accommodation as well as the business accommodation should have been occupied by the tenant or his predecessor in title for 14 years. Nor would it now be necessary for the business to have been carried on by the tenant during 14 years—it would be enough whether it had been carried on by the freeholder or the tenant.

A new clause was next introduced based on s. 5 (6) of the Rent Act, 1920, providing compensation for the tenant where a landlord fraudulently obtained prossession of premises, e.g., on the ground of redevelopment, and then sold them.

An amendment was made to cl. 2 (tenancies to which cl. 1 applies) making it clear that the scope of the protection afforded by Pt. I of the Bill is the same as that afforded by the Rent Acts as regards protection of the tenant's "family." A proposal that the family should remain protected even if the leaseholder went away from the premises was not accepted. Clause 2 (3) was amended to provide that when a landlord applies to the court for a declaration that at the term date the circumstances

were such that Pt. I would apply to the tenancy, the onus shall be on him and not on the tenant to satisfy the court. An amendment was also inserted to make it clear that a "long tenancy" includes a tenancy extended by the Leasehold Property (Temporary Provisions) Act, 1951.

Next a series of amendments was made to cl. 4 (termination of tenancy by the landlord). The SOLICITOR-GENERAL said it was proposed to abolish completely the provisions that if a tenant did not apply within two months saying whether he wished to remain as a statutory tenant he lost all right to a statutory tenancy. Instead the landlord would apply to the county court either for determination of the terms of the statutory tenancy or for an order for possession. In either case the proceedings would have to be served on the tenant and if he still failed to respond, then the court would deal with the matter. He would not now lose his right to a statutory tenancy provided that within two months following receipt of the letter the tenancy was one which came within the scope of the Bill.

Amendments were made to cl. 7 (settlement of terms of statutory tenancy), the first of which makes it clear that the parties can agree a standard rent if they are so minded; the others are supplementary to the revised arrangements under cl. 4. Clause 8 (provisions as to repairs during period of tenancy) was amended to include survey fees in the payment for initial repairs.

[17th June.

C. QUESTIONS

BUILDING SOCIETIES (INTEREST CHARGES)

The ECONOMIC SECRETARY TO THE TREASURY refused to introduce legislation to control building society interest charges.

[17th June.

INCOME TAX LITIGATION (TREASURY COSTS)

The FINANCIAL SECRETARY TO THE TREASURY declined to give instructions that a limit should be placed on the extent to which the Treasury might incur costs in litigation involving tax and duties and that they should be limited to the amount of money in dispute. When an important question of principle was at stake it might be necessary to incur costs in litigation in excess of the amount in dispute. [17th June.

STATUTORY INSTRUMENTS

Agriculture (Ploughing Grants) (Scotland) Scheme, 1954. (S.I. 1954 No. 759 (S. 85).) 5d.

Air Navigation (General) (Sixth Amendment) Regulations, 1954. (S.I. 1954 No. 777.)

Edinburgh-Carlisle Trunk Road (Stow By-Pass) Order, 1954. (S.I. 1954 No. 767.)

Gretna-Stranraer-Glasgow-Stirling Trunk Road (Kilmarnock Eastern By-Pass) Order, 1954. (S.I. 1954 No. 772.)

Importation of Raw Cherries (General Licence) Order, 1954. (S.I. 1954 No. 776.)

National Health Service (General Dental Services) Regulations, 1954. (S.I. 1954 No. 742.) 1s. 5d.

Draft **National Insurance** (Industrial Injuries) (Mariners) Amendment Regulations, 1954.

National Insurance (Industrial Injuries) Mariners (Insurability) Regulations, 1954. (S.I. 1954 No. 782.) 5d.

North of Scotland Hydro-Electric Board (Constructional Scheme No. 72) Confirmation Order, 1954. (S.I. 1954 No. 778 (S. 86).)

Public Health (Aircraft) (Scotland) Amendment Regulations, 1954. (S.I. 1954 No. 755 (S. 84).)

Public Health (Ships) (Scotland) Amendment Regulations, 1954. (S.I. 1954 No. 754 (S. 83).)

Draft **Raw Cotton Commission** (Dissolution) Order, 1954. 6d.

Rules of the Supreme Court (Summons for Directions, etc.), 1954. (S.I. 1954 No. 761 (L. 5).) 8d.

Rural District Councils (Urban Powers) Order, 1954. (S.I. 1954 No. 756.)

Stopping up of Highways (Derbyshire) (No. 6) Order, 1954. S.I. 1954 No. 770.)

Stopping up of Highways (Durham) (No. 3) Order, 1954. (S.I. 1954 No. 768.)

Stopping up of Highways (Lincolnshire—Parts of Lindsey) (No. 1) Order, 1954. (S.I. 1954 No. 769.)

Stopping up of Highways (London) (No. 25) Order, 1954. (S.I. 1954 No. 738.)

Stopping up of Highways (London) (No. 26) Order, 1954. (S.I. 1954 No. 739.)

Stopping up of Highways (Northamptonshire) (No. 2) Order, 1954. (S.I. 1954 No. 765.)

Stopping up of Highways (Plymouth) (No. 3) Order, 1954. (S.I. 1954 No. 771.)

Tuberculosis (Area Eradication) Amendment Order, 1954. (S.I. 1954 No. 762.) 5d.

Tuberculosis (Central and South West Scotland Attested Area) Order, 1954. (S.I. 1954 No. 764.)

Tuberculosis (South-West Wales Attested Area) Order, 1954. (S.I. 1954 No. 763.)

Draft **Wool Textile Industry** (Export Promotion Levy) (Amendment No. 2) Order, 1954.

Draft Wool Textile Industry (Scientific Research Levy) (Amendment No. 2) Order, 1954.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Assault—CONVICTION—BINDING OVER—WHETHER BAR TO CIVIL PROCEEDINGS

Q. Our client was charged that, contrary to s. 20 of the Offences Against the Person Act, 1861, he did maliciously inflict grievous bodily harm to another man. Information was laid by the police, and the summons, with the consent of the accused, was heard by the magistrates. After hearing the evidence, the magistrates reduced the charge to common assault and he was bound over for twelve months in the sum of £20. The injured man is said to be bringing civil proceedings against our client in respect of the injuries, which were of a very severe nature. Is the conviction for common assault an absolute bar to the civil proceedings?

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

A. It appears from the inquiry that the information was laid under s. 20 of the Act of 1861—not s. 42 or s. 43—and that the magistrates did not dismiss the charge but convicted, though they imposed neither fine nor imprisonment. In these circumstances and for these several reasons we do not think that it is possible either to obtain such a certificate from the justices as is mentioned in s. 44 of the Act, or to plead in bar of the civil proceedings that the defendant has paid the fine imposed or suffered the imprisonment awarded for the assault. We know of no other impediment to the civil action.

Appointment of New Trustees by Personal Representative—WHETHER ACKNOWLEDGMENT FOR PRODUCTION OF GRANT OF REPRESENTATION NECESSARY

Q. On a title which we have been examining a perfectly straightforward and usual transaction appears, namely, the appointment of new trustees by the personal representatives of a sole surviving trustee of a trust for sale of land. The trustees thus appointed are now selling to the purchaser for whom we act. There is no acknowledgment for production of probate in the appointment of trustees. Nor can we find any precedent in any of the usual volumes of precedents for inserting such an acknowledgment; but it seems to us that the personal representatives ought to have given such an acknowledgment, because it is the grant of probate which proves that they were appointed personal representatives and that they therefore were the persons entitled under the Trustee Act, 1925, to make the

appointment. Are we right in pressing for an acknowledgment of the right of production of probate to be obtained from the personal representatives?

A. It is not customary for the personal representative of a sole or last surviving trustee to give to trustees whom he appoints an acknowledgment for production of the grant of representation to the deceased trustee's estate, for the reason that such grant is not, strictly speaking, a document of title. The right of the personal representative to appoint new trustees arises from the fact of a grant in his favour, which fact is a matter of record, equally capable of proof by a search at the Principal Probate Registry as by production of the original grant, which therefore has no superior evidentiary value.

Estate Duty—Donor Wishing to Give Residence to Daughter with Free Occupation for Himself—Various Methods Possible

Q. A client of ours wishes to make a gift of his residence to his daughter, reserving to himself and his wife the free occupation of the house for their lives and the life of the survivor of them. We doubt whether such a reservation would be valid and consider that a lease from the daughter after the gift would be the proper course. What are your views, please? Could relief of conveyance stamp duty be obtained, since the daughter would only get vacant possession on the death of the survivor of her parents?

A. We do not think your object could very conveniently be accomplished by a reservation strictly so called, but it could be done by settling the house upon your client for life, remainder to his wife for life, remainder to his daughter. If this were done estate duty would be payable on the whole value of the house on the death of the settlor. Or he could, as you suggest, convey the whole property to the daughter and let her grant to her parents a lease at a rack rent. The question then would be whether the grant of such a lease would be a benefit reserved so that estate duty would be payable on the death of your client; there is much to be said either way, but probably it would not be claimed as a benefit if the lease was at a rack rent. But stamp duty here would be high. Assuming that the saving of estate duty is of importance, we think the best thing is to settle the property upon the settlor for x years with remainder to the daughter; x should be long enough to cover the expectation of life of the settlor and his wife. On his death all that will be subject to duty is the "fag-end" of the term of years, and that "fag-end" will be left to his widow. There is no reservation of benefit out of what is given—which is a reversion expectant upon an equitable term of years. This will produce the benefits of your second suggestion more cheaply and with less danger from the aspect of estate duty.

Licensing Act, 1953—Application—Service of Notice on Chief Constable for County

Q. When making application to the licensing justices in the county for a beer and wine licence, the usual notices in accordance with the old procedure were headed and dispatched as follows: (1) to the clerk to the rating authority; (2) to the clerk to the licensing justices; (3) to the superintendent of police of the petty sessional division in question. The notice also states "And to all whom it may concern," and has been inserted in the local newspaper. It is now apparent that the Licensing Act, 1953 (though seemingly a consolidation Act), requires by Pt. I of Sched. III that the notice be served on the chief officer of police, who is defined in s. 165 as the chief constable for the county. The police state that the notice is bad and time does not permit of its reservice by registered post if the application is to be heard at the Brewster Sessions in February. Do you consider that the police contention is well founded? Do you know of any authority which could be quoted to the police giving substance to our contention that such service could be on the subordinate officer as agent for the chief constable? In fact, we believe that even if it had been served on the chief constable he would have passed it to the superintendent on whom the notice was in fact served. Do the words "And to all whom it may concern" assist us in our desire to set up the notice as good? Would the *de minimis* rule assist us if the case was heard at the Brewster Sessions and the police formally objected to the notice?

A. The Licensing (Consolidation) Act, 1910, ss. 15 and 25, referred to service of notices on "the superintendent of police of the district." The Licensing Act, 1953, Sched. III, requires service on the "chief constable for the police area." "Police area" is not defined in the 1953 Act, but in s. 33 of, and Sched. III to the Police Act, 1890, it is limited to a county and not to any districts of a county. We cannot see how the High Court could ignore this (apparently) deliberate change of wording by Parliament from "superintendent" to "chief officer of police" and we would draw attention also to *R.* v. *Poole Justices* (1951), 95 Sol. J. 452, in which the requirements as to notices being fixed to the door were very strictly construed, so as to hold that a notice fixed in a more conspicuous position was not sufficient. We do not consider that the words "And to all whom it may concern" assist, nor do we think that the court would apply the *de minimis* rule in view of the attitude adopted by the High Court in the *Poole* case so recently. We suggest that fresh notices should be served in time for the second day of the licensing meeting, which will be held in March, and service on the chief constable be effected in time for this second meeting (see Paterson's Licensing Acts, 61st ed., p. 341; 62nd ed., pp. 1134–35, and *R.* v. *West Riding Justices* (*Drake's Case*) (1869), L.R. 5 Q.B. 33). We have advised as above, since that seems to be the safest and cheapest course to adopt. If, however, it is desired to contend that service on the superintendent is still good, the case of *R.* v. *Riley* (1889), 53 J.P. 452, is of some relevance. In that case the sessions were to be held on 19th September; service was effected on an inspector on 28th August (i.e., the last day) at one of the police stations in the magisterial division concerned, and it was held that service of the notice was invalid. Baron Huddleston said that the Act did not require personal service on the superintendent but the actual point, whether service on the inspector as agent for the superintendent was good, was not considered from the point of view whether it would have been good had the superintendent seen the notice on 28th August. The High Court held that the superintendent should have been served either at his house or his place of business. It may be that to-day the High Court would hold that service on a superintendent was good if it was established that the chief constable in fact had the notice or saw it earlier than twenty-one days before the licensing meeting. Alternatively, the justices can be asked to postpone consideration of the application on terms that notice is served on the chief constable not less than twenty-one days before the adjourned hearing (Licensing Act, 1953, s. 29).

NOTES AND NEWS

Honours and Appointments

Mr. Christian Gerard Timperley Berridge, deputy clerk of Essex County Council since 1934, has been promoted clerk in succession to Mr. John Edward Lightburn, who retires on 30th September.

Mr. Charles Geoffrey Butcher, assistant solicitor to Leicester Corporation since 1950, has been appointed deputy clerk to the Lee Conservancy Catchment Board, as from 4th August.

Mr. Dewi King Davies, clerk of Porthcawl Urban District Council, has been appointed clerk of Neath Borough Council in succession to Mr. Alfred Edwin Ifor Curtis, who retires on 6th September after holding the post since 1919. Mr. Curtis is to be presented with the Freedom of the Borough in recognition of his services. His grandfather held the post from 1866–86, and his father held it from 1886–1918.

The Queen has been pleased to approve the appointment of the Honourable Ewen Edward Samuel Montagu, C.B.E., Q.C., to be Deputy Chairman of the Court of Quarter Sessions for the County of Middlesex with effect from 17th June, 1954.

Mr. Alan Ernest Ellis, senior assistant solicitor to Barrow-in-Furness County Borough Council, has been appointed Senior Legal and Administrative Officer to Crawley Development Corporation.

Mr. John David Wittey, assistant prosecuting solicitor to Essex County Council, has been appointed assistant solicitor to Hornsey Borough Council in succession to Mr. A. N. Mundy.

Personal Notes

Mr. Joseph Rann Green, clerk to the Halesowen Justices, was married on 16th June to Miss Sheila Brown, of Halesowen.

Mr. Francis John Poyner, solicitor, of Leicester, was married on 17th June to Miss Adrienne M. Wilkes, of Birstall.

PRACTICE NOTES

Resealing at Principal Probate Registry—Provision of Copies for Deposit

At present the copy of a Scottish confirmation or Northern Irish or Colonial grant which is required to be deposited at the Principal Probate Registry on resealing must be provided by the applicant.

As an experiment, the Registry is now proposing to accept, at the option of the applicant, a confirmation or grant lodged for resealing without an accompanying copy, and to prepare and retain a photographic copy officially at a charge of 1s. 6d. per sheet.

It is not expected that this procedure will delay the resealing.

D. A. NEWTON, Secretary,
Principal Probate Registry.

17*th June*, 1954.

Queen's Bench Chambers

During the Trinity Sittings a judge of the Queen's Bench Division will sit in chambers on every working day of the week.

On Mondays, Wednesdays and Fridays he will take the ordinary chambers lists. Tuesdays and Thursdays will be reserved for special appointments.

The Lord Chief Justice has emphasised the importance of the officer in attendance on the judge in chambers being informed as early as possible of cases of a length likely to require a special appointment, of the time it is estimated they will last, and of the dates when it would be convenient for them to be taken.

Counsel who are instructed to appear before the judge in chambers are accordingly asked to estimate the probable length of their summonses and to see that their instructing solicitors are—

(*a*) informed without delay of the titles and estimated length of those cases which in their opinion merit special appointments, and

(*b*) requested to make the necessary fixtures with the officer in attendance on the judge.

W. W. BOULTON, Secretary,
General Council of the Bar.

16*th June*, 1954.

Miscellaneous

CARDIGANSHIRE DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Cardiganshire. The plan, as approved, will be deposited in the Council Offices, Aberystwyth, for inspection by the public.

GENERAL COUNCIL OF THE BAR: COUNCIL ELECTION RESULT

The following candidates have been duly elected to fill the twenty-four vacancies upon the Council: *Queen's Counsel*—Mr. Neville Laski, Sir Godfrey Russell Vick, Messrs. John Maude, M. L. Berryman, John Pennycuick, Gerald Gardiner, E. Milner Holland, C.B.E., J. E. S. Simon, M.P., J. R. D. Crichton, E. Martin Jukes. *Outer Bar*—Messrs. R. G. Micklethwait, Denis H. Robson, D. G. A. Lowe, G. N. Black, J. T. Molony, G. H. Newsom, M. J. Albery, V. M. C. Pennington, John Latey, M.B.E., Raymond Stock, J. L. Arnold. *Under ten years' standing at the Bar*—Messrs. Oliver Lodge, K. Bruce Campbell, J. F. Kingham.

HOUSING MANAGEMENT

The Minister of Housing and Local Government has appointed a sub-committee of the Central Housing Advisory Committee, under the chairmanship of Mr. Henry Brooke, M.P., with the following terms of reference:—

"To review the recommendations made in the Third Report of the Housing Management Sub-Committee with regard to the question of residential qualifications required by certain local authorities; to investigate the practice and experience of local authorities in dealing with unsatisfactory tenants and housing applicants, and with regard to evictions; and to make recommendations."

Local authorities and other interested organisations and individuals wishing to submit evidence to the sub-committee are invited to write to the Joint Secretaries, Miss M. Empson and Mr. P. J. Harrop, at the Ministry of Housing and Local Government, Whitehall, S.W.1.

Wills and Bequests

Mr. S. Arnott, retired solicitor, of London, E.C.2, left £56,051 (£55,370 net).

Mr. H. S. Martin, solicitor, of Newcastle-on-Tyne, left £20,395.

Mr. H. Killick, retired solicitor, of Bradford, left £41,458 (£41,333 net).

Mr. P. M. C. Whitton, solicitor, of London, N.6, left £4,080 (£3,920 net).

Mr. J. A. Grundy, solicitor, of Manchester, left £175,342 (£174,122 net). He left £500 to the Solicitors' Benevolent Association.

PRINCIPAL ARTICLES APPEARING IN VOL. 98

3rd April to 26th June, 1954

For list of articles published up to and including 27th March, see *ante*, p. 220

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